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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/540,067

06/22/2005

Peter Dirksen

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EXAMINER

MATHEWS, ALAN A

ART UNIT

PAPER NUMBER

2851

MAIL DATE

DELIVERY MODE

06/11/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/540,067

Applicant(s)

DIRKSEN ET AL.

Examiner

Alan A. Mathews

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-22 and 24-39 is/are allowed.
- 6) ☒ Claim(s) 40, 41 is/are rejected.
- 7) ☒ Claim(s) 23 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Specification

1. The specification is objected to as failing to refer to Applicant's priority to his PCT Application in the first line of the specification.
2. The disclosure is objected to because of the following informalities: Page 11, line 25 recites "wedges 90, 94,98 at the left side is opposed to the inclination of wedges 92, 96, 100 at the---". But the next two paragraphs of the specification and figures 9 and 10 uses the numerals "92", "92", "94", and "100" to designate different elements other than wedges. In other words, the specification makes **duplicate use of numerals "92", "92", "94", and "100" to designate different elements.**

Appropriate correction is required.

Claims

3. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest

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numbered claims previously presented (whether entered or not). Misnumbered claims 22-40 been renumbered as claims 23-41.

4. Claim 23 (newly renumbered) is objected to under 37 CFR 1.75 as **being a substantial duplicate of claim 22**. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 112

5. Claim 41 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 41 appears to be a product-by-apparatus-by-process. In other words, claim 41 spans 3 statutory categories. It is not clear which statutory category claim 41 belongs in. Claim 41 is not a proper dependent claim.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 40 is rejected under 35 U.S.C. 102(b) as being anticipated by Brunner et al. (U. S. Patent No. 6,048,651, cited in the International Search Report). Brunner et al. discloses in column 1, lines 11-28, making a device (an integrated circuit on a wafer). Brunner et al. further discloses using a Fresnel zone target (FZT) pattern 20. The Examiner notes that **claim 40 is a product-by-process claim**, with the device being the integrated circuit on a wafer. MPEP 2113 states **that the determination of patentability of a product-by-process claim is based on the product itself. The patentability of a product does not depend on its method of production.** The device or integrated circuit on a wafer produced in Brunner et al appears to be the same product as produced by claim 40 in the instant application. The Examiner can find no difference in the device or integrated circuit on a wafer produced in Brunner et al than the device produced by claim 40. It is noted that MPEP 2113 gives an example where the process of making the product was allowed, but the product-by-process was rejected.

8. Claim 40 is rejected under 35 U.S.C. 102(b) as being anticipated by Lin et al. (U. S. Patent No. 4,585,342, cited in the International Search Report). Lin et al. discloses in figure 1 and column 3 providing a production mask 4, illuminating by means of controlled illumination system 2, and imaging, by means of projection system 6, the production mask pattern onto substrate (wafer) 28. Figure 2 discloses the wafer containing a plurality of detectors 10, 12, 14, 16, 18, 20, 22, 24, and 26 for controlling the illumination. The Examiner notes that **claim 40 is a product-by-process claim**, with the device being the integrated circuit on a wafer. MPEP 2113

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states that the determination of patentability of a product-by-process claim is based on the product itself. The patentability of a product does not depend on its method of production.

The device or integrated circuit on a wafer produced in Lin et al. appears to be the same product as produced by claim 40 in the instant application. The Examiner can find no difference in the device or integrated circuit on a wafer produced in Lin et al. than the device produced by claim 40. It is noted that MPEP 2113 gives an example where the process of making the product was allowed, but the product-by-process was rejected.

Allowable Subject Matter

9. Claims 1-22 and 24-39 are allowed. The reasons for the indicated allowability of the claims are as follows:

The prior art does not disclose or suggest the step of providing a test object comprises providing a test object having for each Fresnel zone lens a reference mark and in that the step of imaging comprises imaging of a Fresnel zone lens area and the corresponding reference mark area within the field of view of the detection device in combination with all the other elements recited in independent claim 1.

Conclusion

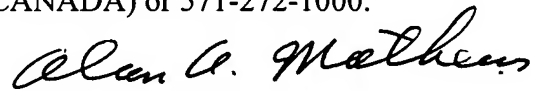
10. Claim 23 is objected to above as being a substantial duplicate to claim 22.
11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The International Publication WO 03/056392 A1 is cited for the same reason it was cited in the specification of the instant application (cited as WO patent application No. 02/01485 on page 17 of the instant application). The patent to Kirksen et al. is cited to show a method of detecting aberrations of an optical imaging system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alan A. Mathews whose telephone number is (571) 272-2123. The examiner can normally be reached on Monday through Friday from 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diane Lee can be reached on (571) 272-2399. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Alan A. Mathews
Primary Examiner
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AM